

*

HIGH COURT OF DELHI AT NEW DELHI

+

Crl. Rev. P. No.350/2010

Date of Decision : 04.07.2011

Anil Kumar Bansal

.....Petitioner

Through: Mr. Atul Kumar Sharma,
Advocate

Versus

State

..... Respondent

Through: Mr. Naveen Sharma, APP
for the State.
Mr.Praveen Mahajan,
Adv. for the Complainant.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

1. This is a Revision Petition filed by the petitioner, challenging the order dated 03.07.2010, passed by Sh.Girish Kathpalia, learned Additional Sessions Judge, cancelling the bail of the petitioner, granted by the learned Magistrate in respect of FIR Nos.02/2007 and 53/2009 of P.S. Gulabi Bagh, registered under sections 420/468/471 IPC.
2. Briefly stated, the facts of the present case are that FIR No.02/2007 was registered against the petitioner on the basis of a complaint made by his mother Shanti Devi Bansal, alleging that the petitioner has fabricated seals/stamps of Notary public and fraudulently induced

her to sign some documents with a view to transfer one half share in property No.29, Rama Park, Delhi, constructed on a piece of land measuring 217.5 sq. yards, which was bequeathed to her by her husband. As a consequence of this, it was shown by the petitioner, to have purchased the said share of her mother. Accordingly, a case under Sections 420 for cheating, 468 for forging documents and 471 IPC, for using fabricated document as genuine, was registered against the present petitioner.

3. Similar offence was registered vide case FIR No.53/2009 on the basis of a complaint made by one Mr.R.K. Khatri (recorded as DK at various places), Advocate and Notary public that it was his stamps/seals and signatures, which were used by the present petitioner for the purpose of transacting the property, which belonged to his mother in respect of which earlier FIR was registered.
4. The petitioner had filed anticipatory bail application not only in the Court of Sessions but also in the High Court as well as in the Supreme Court, which was rejected on 10.12.2009, 31.12.2009 and 29.01.2010 respectively.
5. Since the petitioner was neither arrested nor surrendered, the investigating agency initiated proceedings under section 82 Cr.PC. The present petitioner, left with no option, surrendered before the learned Magistrate on 02.02.2010 and thereafter applied for regular bail before the learned Magistrate. The said bail application was dismissed on

06.02.2010. Second bail application by the petitioner before the learned Additional Sessions Judge also did not bring any fruitful result and was rejected on 20.02.2010. Still not feeling satisfied, the petitioner is purported to have filed another bail application before the learned Additional Sessions Judge, which was dismissed as withdrawn on 09.03.2010.

6. On 10.03.2010, the petitioner applied to the learned Magistrate for grant of bail in respect of FIR No.53/2009 and he was enlarged on bail. Similar bail order was passed by the learned Magistrate in respect of the other FIR bearing No.02/2007 on 15.03.2010 on the ground that the documents, on the basis of which allegations of cheating were made in both the cases, were the same.
7. It is these bail orders in respect of which three cancellation applications were filed; one by the State and other two by the complainants in the two respective FIRs. It is not necessary to dwell on the details of these applications and the number of the FIRs in which these applications were filed, as a common order has been passed by the learned Sessions Judge, in respect of these applications on 03.07.2010.
8. The ground for cancellation of bail, which has been adverted to by the learned Sessions Judge is that there was an arbitrary and improper exercise of discretion by the learned Magistrate in granting bail to the present petitioner

in both these cases. The learned Sessions Judge had also observed the factors, which were factually not correct, were taken into consideration while enlarging the petitioner on bail.

9. To elucidate this, the order of grant of bail passed by the learned Magistrate, notes that the investigations of the case are complete, while as it has been observed that at the time when the bail orders in respect of two cases were passed, the investigations were not complete and the charge sheets were obviously not filed before the competent Court. The learned Sessions Judge after referring to various pronouncements of the Supreme Court, with regard to the factors to be taken into consideration, while cancelling the bail order, has observed that the bail in the instant case has been granted to the petitioner on considerations, which are arbitrary, bereft of factual support and without due regard to the orders, rejecting the bail application of the present petitioner earlier by the superior Courts. It is this order passed by the learned Sessions Judge, which has been assailed by the present petitioner before this Court, in the present revision petition.
10. I have heard the learned counsel for the petitioner and the learned APP for the State including the counsel for the complainants. I have also gone through the record.
11. The main contention of the learned counsel for the petitioner has been that once the bail is granted to the

present petitioner and he has not misused his liberty so as to endanger the holding of a fair investigation or trial then his bail ought not to have been cancelled.

12. It has been contended that the learned Sessions Judge has grossly erred by referring to facts of the case and not taking into consideration the fact that the petitioner had remained in custody for sufficiently long period of time at the time when the bail was granted to him. It was contended that the learned Magistrate had mistakenly stated that the petitioner remained in custody for 60 days while as the petitioner had remained in custody for 38 days only including four days of police remand, during which nothing was recovered. Therefore, no infirmity could be found in the orders passed by the learned Magistrate.
13. The learned counsel for the petitioner has copiously referred various pronouncements of the Apex Court as well as of the Delhi High Court in the petition, regarding the question of cancellation of bail and circumstances in which such a power ought to be invoked by the superior Court although, no such judgment or a copy thereof has been cited by the learned counsel for the petitioner but I have gone through the said judgments referred to including the judgments referred by the learned APP and the counsel for the complainant.

14. The counsel for the complainants, on the other hand, has contended that the order, which is impugned by the present petitioner regarding cancellation of his bail is not a routine case, where the bail is sought to be cancelled on the ground that there is misuse of liberty by the petitioner but the order is being assailed by the respondents on the ground that the bail was granted in an arbitrary manner without reference to the fact that earlier the bail application of the petitioner was rejected not only by the learned Magistrate but also by the Sessions Court and, therefore, on the ground of judicial propriety, the learned Magistrate ought not to have released the present petitioner on bail without reference to the orders of the superior Court or at least by showing a proper application of mind.
15. It may be pertinent here to mention that although this submission may be correct with reference to order dated 10.03.2010 but it could not be said so, with regard to the order dated 15.03.2010 because in the latter order the learned Magistrate has referred to the Supreme Court judgment cited by the Respondent No.2.
16. I have carefully considered the submissions made by the learned counsel for the parties. I have also gone through the impugned judgment.
17. The present petition has been admittedly filed by the petitioner as a revision petition. An order granting bail is an interlocutory order (Refer to Amar Nath Vs. State of

Haryana, AIR 1977 SC 2185). Similarly, an order refusing bail or an order cancelling bail has been held to be an interlocutory order. This is a view expressed by Orissa, Allahabad and Andhra Pradesh High Courts. It may be pertinent here to refer to a Division Bench judgment of the Orissa High Court in Durga Prasad Sao Vs. State of Orissa, 1983 Cri LJ 1590, where the question as to whether the order regarding granting, refusing or cancelling a bail are interlocutory orders or not has been dealt with and it has been held that all these orders are essentially interlocutory orders. The reasons for holding this view is that the grant or the cancellation of a bail does not determine the guilt or the innocence of the accused nor does it terminate the trial and conversely successive bail applications lie at the stage of investigation or trial provided that there is a change in circumstances or new facts are discovered. If that be so, then on account of the statutory bar under Section 397 (2) Cr.PC, it has been held that the orders granting, refusing or cancelling the bail being interlocutory orders cannot be subject matter of revision by the superior Courts.

18. I do not find any reasonable justification to hold contrary to the view expressed by the Division Bench of the Orissa High Court. The Apex Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anrs., AIR 2005 SC 921 has also observed that the principles of res judicata do not apply to bail application meaning thereby successive bail

application can be filed. The only thing to be noted is that there must be change in circumstances or new factors ought to have come in operation. This is only to prevent the abuse of the processes of law by trying to do forum shopping what is called as bench hunting. It may also be noted here that the Apex Court in Babu Singh Vs. State of U.P., AIR 1978 SC 527, has also held that an order refusing bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. The reason for this is that interim direction is not conclusive adjudication. This apart, the present Revision Petition in my considered opinion is not maintainable against the impugned order dated 03.07.2010, cancelling the bail of the petitioner as he is free to file fresh bail applications before the same Court or the Sessions Court in case there is a change in circumstances.

19. Having said so, the Division Bench has also taken note of the fact that rejection of a bail, when it is applied, is one thing and the cancellation of a bail already granted is another as has been held by the Apex Court in State through the Delhi Administration Vs. Sanjay Gandhi, AIR 1978 SC 961. The cancellation of a bail necessarily involves the supervening circumstances to be taken into consideration or the conduct of the petitioner, who is enlarged on bail as to whether his continuance on bail is

conducive to the fair trial or not. This is a view expressed by the Apex Court in Kalyan Chandra's case also (supra), which has been referred by the learned Sessions Judge.

20. Having said so, there is another aspect of the matter that the bail can be cancelled under Section 439(2) not only on account of the supervening factors or the conduct of the accused but also on the ground that the order of grant of bail passed by the Court below was an arbitrary order and it had not taken into consideration the factors which were germane for the grant of bail or that it had not taken into consideration that the earlier bail applications of the accused persons were rejected by the higher Courts.
21. So far as the facts of the present case is concerned, it is admittedly not the case of the respondent No.2 or the prosecution that the petitioner has misused his liberty or that there are supervening circumstances, which warrant the cancellation of the bail of the petitioner. The grievance of respondent No.2 and the prosecution that the bail which was granted to the petitioner on 10.03.2010 in one FIR and on 15.03.2010 in the second FIR had been granted without giving due consideration to the orders of the higher Courts, rejecting his bail applications earlier. It was also observed that it was on account of the fact that the learned Magistrate had observed that the investigations of the case were complete, which was factually incorrect, that the bail was sought to be cancelled.

22. I have observed hereinabove that although the revision, which is filed by the petitioner, is not maintainable on the ground that the order of cancellation of bail passed on 03.07.2010 by the learned Sessions Judge is an interlocutory order and, therefore, cannot be subjected to revision under section 397 read with section 401 of the Cr.PC. However, in order to satisfy the conscious of this Court, in exercise of its power under Section 482 of Cr.PC, I have gone through the impugned order and I find that there is no infirmity in the order, which has been passed by the learned Sessions Judge, warranting, holding of an opinion different than the one, expressed by him. This is on account of the fact that the learned Magistrate has shown great haste in passing the orders regarding grant of bail firstly on 10.03.2010, without taking note of the fact that on 09.03.2010 the petitioner's application for bail had come up before the learned Sessions Judge, which was dismissed as withdrawn earlier. An application is dismissed as withdrawn only when a party finds that its submissions are not bringing the desired result as prayed for, by him. Meaning thereby, as the Sessions Judge was not inclined to enlarge the petitioner on bail, the petitioner was constrained to withdraw the said bail application. Even prior to this, on 20.02.2010, the learned Sessions Judge had rejected the bail application of the petitioner and similarly on 06.02.2010, the learned Magistrate had also

rejected the bail application of the petitioner and there did not seem to be any change in circumstances except the number of days of custody of the petitioner had got increased. It was totally inappropriate on the part of the learned Magistrate to observe that the petitioner was not guilty of forgery as the signatures had been forged by one Dinesh Dua though in the latter portion of the order, it has been observed that Dinesh Dua had signed the documents or put the signatures only at the instance of the petitioner. Apart from this, the investigations of the case were not complete as has been observed by the learned Magistrate. The learned Magistrate has not shown in the first order, that is, on 10.03.2010, that it had applied its mind to the fact that two custodial bail applications of the petitioner stood rejected earlier. I feel that the learned Magistrate ought to have mentioned in the order that it had taken into consideration the earlier rejection orders yet the discretion was being exercised in favour of the petitioner. Therefore, the order dated 10.03.2010, as observed by the learned Sessions Judge, was undoubtedly an arbitrary and was rightly set aside by him by cancelling the bail order of the petitioner.

23. So far as the second order dated 15.03.2010 is concerned that was also passed as a consequential order on account of the order dated 10.03.2010 . However, in the latter order, the learned Judge has referred to the judgment of the Apex

Court in Kalyan Chandra's case (supra) but it seems that the learned Magistrate has not appreciated the submissions made by the learned counsel for the respondents.

24. I, accordingly, feel that the learned Sessions Judge has rightly passed the impugned order and, there is no infirmity in the same, which can be said to be an abuse of the processes of law or warranting passing of any order different than the one passed by him to further the interest of justice.

25. Accordingly, the present petition of the petitioner is dismissed. However, as there is a stay order in favour of the petitioner against the impugned order, the stay order stands vacated but the petitioner is given two days time to surrender before the trial Court. Expression of any opinion hereinbefore may not be treated as an expression on the merits of the case to have an impact on any bail application filed by the petitioner on a later date.

26. Dismissed.

V.K. SHALI, J.

July 04, 2011

ss